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C O N F I D E N T I A L SECTION 01 OF 03 ABU DHABI 000607

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SUBJECT: UPDATE ON UAE DETENTION OF MILITARY CARGO, PERSONNEL ON
RUSSIAN AIRCRAFT

REF: ABU DHABI 00583

Classified by Ambassador Richard Olson, reasons 1.4 (b) and (d).

11. (C) Summary: Following overnight indications that four U.S. military escorts (reftel) might be prosecuted along with the Russian crew and carrier, Ambassador met June 15 with UAE Armed Forces Chief of Staff General Rumaithi and Minister of Interior Saif to seek their intervention in the release the U.S. escorts and cargo. Saif was direct in pointing to violations of the law by the Russian carrier, Volga-Dnepr Air, and the U.S. military personnel, but later June 15 the U.S. legal team representing the Russian carrier informed us that the captain of one of the aircraft had been fined, and that this appeared to end the case. Pending confirmation that there is no further legal action planned, and that the U.S. aircrew and cargo will be allowed to depart, we need to begin addressing how to design a better clearance request process in order to avoid similar incidents in the future. See action request in para 14. End Summary.

12. (C) On 15 June 2009, the senior of four U.S. soldiers accompanying the military cargo on the two IL-76 aircraft informed DATT that he was being questioned by the Ras al-Khaimah prosecutor and was now being considered a suspect in the commission of a crime. In response, Ambassador and DATT immediately met with UAE Armed Forces Chief of Staff (COS), Lt Gen Hamid Thani al Rumaithy. The Ambassador laid out the background of the case, appealed for fair treatment of the four U.S. soldiers, and described the contractual relationship between Volga-Dnepr Air (VDA) and TRANSCOM. The COS re-affirmed the unique and close relationship between the UAE and the US but stated the problem's resolution rested with the Minister of the Interior, Sheikh Saif bin Zayed al Nahyan. He recommended the Ambassador meet with Sheikh Saif.

13. (C) The Ambassador met with Sheikh Saif in the early afternoon, and again reviewed the background, acknowledged that the cargo and passengers on the flight were not consistent with our diplomatic overflight clearance, but asked Sheikh Saif to release the couriers who had simply been performing their duties in good faith, and release the US cargo which was needed for the fight in Afghanistan. The meeting was cordial and Saif was conversant with the issue. Saif indicated that the UAE is attempting to tighten its own internal controls to stop illicit cargo from entering the UAE, and was doing so after repeated requests from the USG (Note: this is correct in that we have repeatedly attempted to shut down use of UAE based carriers carrying weapons in contravention of UNSCRS). Saif emphasized the outstanding relations between the US and the UAE but noted that laws had been broken and local prosecutors needed to be allowed to do their duties. Most troublingly, Saif observed that while the US personnel may not have been aware of what the overflight

clearance said, they should have known that entering with a weapon was a "violation of international law." He concluded his remarks by telling the Ambassador he would look into the matter but suggested both countries prevent further problems of this type in the future through enhanced cooperation. Ambassador closed the meeting with a personal appeal to release the US Service personnel.

14. (C) Shortly after the Ambassador's meeting with Sheikh Saif, Volga-Dnepr legal rep Glen Wicks told the DCM and DATT that the VDA aircrew was called into the court in Fujairah. The Judge told the crew he had made his decision and fined the Captain of the aircraft 10,000 Dirhams (approximately 2740 USD). The judge then closed the case and released the aircrew. This is preliminary information; we do not know if there will be further steps from the courts. We do not have final information on the status of the U.S. military personnel and cargo.

15. (C) Today's developments followed Mission discussions on June 14 with the Wicks legal team. Wicks told us that the main reason for the current problems was the inaccuracy of the diplomatic clearance obtained on VDA behalf by the Defense Attach Office (DAO). VDA, through Mr. Wicks has secured local legal representation who agrees the problem is with the diplomatic clearance. At the end of the day the bottom line is the UAE believes VDA was illegally carrying undeclared weapons into the UAE.

16. (C) The process for obtaining a diplomatic clearance requires participants to pass and receive accurate information. The shipper must provide the carrier an accurate list of the cargo, the carrier must provide the DAO an accurate list plus accurate details about the aircraft and crew as passengers. The DAO in turn provides the

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Ministry of Foreign Affairs the complete information package. MFA then provides a copy to General Headquarters who makes sure the aircraft is not intercepted and/or shot down. MFA also provides a copy to the Ministry of the Interior, which in turn passes a copy to the local customs and immigration offices at the landing airfields. To complete the process MFA sends the clearance back to the DAO, which sends the clearance to the carrier.

17. (C) There are certain items that will always need to be highlighted in the clearance request process when carried on the aircraft: passengers, weapons, ammunition or reconnaissance equipment. In this case the carrier, VDA, claims they did not get an accurate list of the cargo from the shipper (USG) and therefore forwarded a generic cargo description to meet the needs of the DAO, indicating they were carrying armored personnel carriers (APCs). (Note: once the cargo was actually loaded on the VDA aircraft, VDA would have been well aware the cargo they were carrying -- sealed cargo containers and pallets -- was not the APCs they told the DAO they were carrying.) The Wicks Group told us the aircrew and VDA had no idea what they were carrying, they were only completing their contractual obligations. The containers did in fact hold a number of weapons of varying sizes and uses.

18. (C) VDA also failed to update the DAO with the number of crew and passengers actually on the aircraft. In conveying the clearance request, VDA told the DAO there would be five crew members and no passengers on all of their aircraft. The aircraft now stuck in Fujairah had five crew and two passengers (U.S. military personnel serving as cargo couriers). The aircraft currently in Ras al Khaimah landed with thirteen crew and two passengers (U.S. military personnel serving as cargo carriers).

19. (C) Finally, the VDA crews did not follow their own company directives. VDA requires the crew to confiscate and secure all personal weapons. The crew completed their internal documents stating the personal weapons were confiscated and sealed in a locked container onboard the aircraft. In reality, the U.S. military personnel serving as couriers were never approached by the aircrew in regards to their personal weapons. In discussions between the VDA Executive President and the DATT the VDA executive admitted his crews rarely if ever follow this procedure because the US Army soldiers do not like the policy. When the aircraft landed in Ras al Khaimah the two US Army couriers walked off the aircraft in possession of their

personal weapons, which were in plain sight.

¶10. (C) The members of the Wicks Group asked the Mission today to deliver a letter stating the cargo and soldiers are USG and the aircraft was operating under a contract with the USG. Mission informed the Wicks Group this letter and direction to deliver the letter must come from the Department and suggested the L in State and the Office of General Counsel in DOD as the best contacts.

¶11. (C) The DAO is seeking guidance from the DOD executive agent for processing diplomatic clearances in the future. The DAO will begin immediately to demand an accurate cargo, passenger and crew manifest from VDA and all other commercial carriers. The DAO will require any changes to be provided immediately and the DAO will in-turn update the request. All concerned should know the approval process for a diplomatic clearance is 3-5 business days after the request is made. Any updates to a request re-start the 3-5 day clock. All cargo, passenger and crew manifests must be accurate and static from request to execution or we risk further incidents and delays.

¶12. (C) Comment: There is an alternative solution, which VDA uses in the U.S. VDA established and manned an office in the US to handle all clearances. This office obtains clearances commercially rather than through diplomatic channels. A similar arrangement could be established in the UAE to obtain clearances. A commercial relationship will allow VDA greater latitude and flexibility in the cargo, passenger and crew areas of concern. This commercial relationship would remove all USG official involvement in the clearance issues. End Comment.

¶13. (C) The Wicks Group makes the argument that since the USG secured the clearance for the aircraft the aircraft should be considered a "State Aircraft" under the Chicago Conventions of the International Civil Aviation Organization. Wicks Group feels this status affords VDA the protection of diplomatic status. In essence the VDA aircraft should be treated the same as a US Military aircraft, Wicks says.

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¶14. (C) Action requested: Mission requests guidance on processing future clearance requests for commercial aircraft contracted to the USG. Our preference is that such aircraft request clearances commercially. However, if addressees prefer we continue to request through diplomatic channels, we need to be sure the process provides 100% accurate information on cargo, crew, etc. in advance of our request for diplomatic clearances.

OLSON